OFFICIAL ADMINISTRATOR MALAYSIA & ORS.

v.

YEOH AH LEE

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[CIVIL SUIT NO. 1738 OF 1985]
8 FEBRUARY 1989

DAMAGES: *Personal injury claim - Estate claim - Loss of earnings of deceased persons awarded to estate - Injuries suffered by three plaintiffs - Fracture of femur, fracture of humerus and lacerations.*

The defendant appealed against the decision of the High Court in respect of damages awarded in a personal injury claim and in an estate claim.

The only issues were the special damages awarded to the third defendant for the services of a domestic help; the loss of earnings of the first deceased; the loss of earnings of the second deceased; the loss of amenities and pain and suffering suffered by the third, fourth plaintiff and fifth plaintiff.

The first deceased was earning RM695 per month at the time of his death. He was 51 years old then.

The second deceased was a canteen operator. She was 41 years old at the time of her death.

The third plaintiff had a fracture of the left humerus and a fracture of the right femur.

The fourth plaintiff had a fracture of the right femur and a laceration of in the forehead.

Held:

[1] The sum of RM100 per month for 5 months was awarded as special damages for the cost of a domestic help during the period the third plaintiff was unable to perform household chores. There was no necessity for cogent evidence as that was a reasonable award.

[2] The sum of RM18,900 was awarded as loss of earnings of the first deceased to the first plaintiff. That award was based on RM526.40 per month for a period of three years. The multiplier was three years as the first deceased would have retired within 4 years from his death.

[3] The sum of RM96,500 was awarded as loss of earnings of the second deceased to the second plaintiff. The damages for the pre-trial period was RM900 per month for a period of 100 months. The damages for the post trial period was RM6,500 for a period of 8 months.

[4] The sum of RM26,000 was awarded to the third plaintiff as damages for the pain and suffering and loss of amenities.

[5] The sum of RM38,700 was awarded to the fourth plaintiff for pain and suffering and loss of amenities.

[6] The damages were awarded on the basis of 100% liability. Interest at 4% per annum was awarded on the special damages from the date of accident to the date of judgment and 8% per annum for general damages from the date of service of the writ to the date of judgment.

[Judgment to the plaintiffs with costs to be taxed.]

Cases referred to:
Victor Alphonse Sebastian & Ors. v. Lee Ah Leek [1987] 1 MLJ xxi
Teo Ah Ley v. Tan Kim Hock [1988] 1 MLJ xxxiv

For the plaintiffs - Loh Yet Kong: M/s. Rusnah Loh Ng & Co.
For the defendant - C.K. Leong; M/s C.K. Leong & Co.

JUDGMENT

Abdul Malek Ahmad J:

The defendant had been found to be 50% liable for the accident between the car (PAE 7505) driven by him and that (AAD 1395) driven by Ramli bin Ibrahim (hereinafter "the 1st deceased') at the 21½ milestone Kuala Kangsar - Ipoh trunk road on 7 August 1980 at about 5.30 p.m. I had also made the following awards based on 100% liability:

1st plaintiff:

Special damages RM1,020 (agreed)

General damages:

Loss of expectation of life RM5,000

Loss of earnings at RM525 for 3 years direct multiplier RM18,900

2nd plaintiff:

Special damages RM1,000 (agreed)

General damages:

Loss of expectation of life RM5,000

Loss of earnings at RM900 for pretrial period of 100 months RM90,000 and balance of post-trial 8 months RM 6,500 totalling RM96,500

3rd plaintiff:

Special damages:

[a] no proof but Court allows RM100 for 5 months = RM500

[b] RM390 (agreed)

[c] RM68 (agreed)

[d] and [e] no proof and abandoned

pain and suffering and loss of amenities

fracture of left humerus RM7,500

fracture of right femur RM22,000

with overlapping Court awards RM26,000

4th plaintiff:

Special damages RM390 (agreed)

General damages:

pain and suffering and loss of amenities

fracture of right femur RM22,000

laceration at forehead RM1,000

haemotoma right eye RM12,000

fracture right temporal and occipital bones RM10,000

with overlapping Court awards RM38,700

5th plaintiff:

Special damages RM40 (agreed)

General damages RM500 (agreed)

The defendant has now appealed against the said decision only as regards quantum. This certainly cannot be as regards the award for special damages of RM1,020 for the 1st plaintiff, RM1,000 for the 2nd plaintiff, items [b] and [c] for RM390 and RM68 respectively for the 3rd plaintiff and RM390 for the 4th plaintiff and for general and special damages of RM500 and RM40 respectively for the 5th plaintiff, as these had been agreed to at the outset by both Counsel. Similarly, I don't see how the award of RM5,000 for loss of expectation of life for the 1st and 2nd plaintiffs can be objected to by the defendant as it was his Counsel who had in fact suggested this figure based on decided authorities whereas learned Counsel for the plaintiffs had asked for RM7,000.

What is left in issue in fact are the general damages awarded for pain and suffering and loss of amenities and for loss of earnings and item [a] of special damages for the 3rd plaintiff. I had disallowed items [d] and [e] of special damages for that plaintiff as they had been abandoned but had allowed RM100 for five months for the cost of a domestic help during the period the 3rd plaintiff was unable to perform the household chores in view of the injuries sustained. This, I felt, was a reasonable award despite her claim for RM150 per month and despite the fact that particular maid was not called to give evidence. Since this event took place some eight years earlier and taking judicial notice of the speedy manner servants come and go, I saw no practical necessity to insist on cogent evidence for the item of damages.

As for the loss of earnings of the 1st deceased, learned Counsel for the defendant had submitted that the award should be based on a multiplier of 3 as the 1st deceased was 51 at the time of the accident and his death and a multiplicand of RM200 as the 1st deceased was earning RM695 a month. Deducting RM250 for living expenses, Counsel was of the view that he could not save more than RM200 a month for the estate. He therefore suggested the figure of RM6,538 based on the annuity table. (The actual figure in the annuity table reads RM6,535.79 sen).

Learned Counsel for the plaintiffs submitted that for the first four years of the pretrial period there should be an award of RM25,267.20 sen based on a monthly income of RM526.40 sen calculated at RM81.40 sen allowance added to the RM695 for salary minus RM250 for monthly expenses. Then, for the remaining four years four months of the pre-trial period, the figure should be RM122.50 sen based on his pension of RM372.50 sen minus the RM250 living expenses totalling RM6,247.50 sen. (This is actually only for 51 months as for 52 months it should be RM6,370).

I was of the view that the correct figure should be, as submitted by Counsel for the plaintiffs, the RM695 monthly earnings at the time of the accident minus the RM250 monthly expenses plus the RM81.40 sen allowance amounting to RM526.40 sen. Calculated to the nearest, I made an award RM525. Since he was aged 51 at the time of death and would be retiring at 55 anyway, I held that he could not be said to be entitled to the same figure after his retirement even if he had lived. Accordingly, I held that the correct multiplier was 3 and since this fell into the pretrial period, I was of the considered view that he was entitled to the direct multiplier and not the annuity table. In the event, I awarded him RM525 x 36 amounting to RM18,900. Since he would not be earning after the age of 55 and since it is the accepted practice that there should not be any award for future loss after that age and in any case he was entitled to receive a pension on retirement, I was of the opinion that he was not entitled to any loss of future earnings on the balance of the pretrial period.

The 2nd deceased was aged 42 at the time of her death due to the accident. The defendant's Counsel correctly submitted that her multiplier should be 9 but argued that her income should be RM200 a month giving her a claim for RM17,464 (the correct figure is RM17,058.77 sen) based on the annuity table. Counsel for the plaintiffs insisted that the 2nd deceased had been able to earn about RM200 a day based on 100 plates of rice and "lauk" sold at RM2 per plate per month and with RM80 a day for expenses, and RM400 monthly for her personal expenses, RM200 monthly for the cook and RM100 monthly for dishwasher, she was able to earn RM2,720 (the correct amount should have been RM5,200) pre-trial period was 99 months (it should have been 100 months) Counsel asked for RM269,280. Then, for the post trial period of three years, Counsel asked for another RM88,000 which I must confess here were somewhat preposterous figures to ask for a canteen operator in a Police Field Force Camp despite the suggestion that all the bachelors in the camp had to eat out and this had accounted for the high takings. In any case, there was no evidential support from her income tax payments or her assets in the application for letters of administration for this very lucrative business and I was compelled to bring these figures down to earth on the following basis.

Having regard to the alleged large clientele, PW3 had stated that the 2nd deceased was able to get RM170 to RM180 a day for 26 days a month totalling RM4,680. I felt that if a canteen operator could earn this much per day, everyone would opt to be one. I would say a more realistic figure would have been about RM130 per day and even this more on the generous side considering the contingencies of that line of business. The 2nd deceased, however, had to spend about RM70 a day for the canteen expenses amounting to RM1,820 per month, RM400 for her own living expenses, and RM300 for her dishwasher and cook, the balance would come to about RM860 a month having deducted the RM2,520 from the RM3,380 a month. Rounding up to the nearest hundred, I made an award of RM900 for 100 months on a direct multiplication totalling RM99,000 and for the balance period of eight months post trial from the agreed multiplier of 9, I made an award of RM6,500 calculated on the annuity table. I was of the view that this was a more realistic and reasonable method of a calculation in the circumstances.

The 3rd plaintiff suffered a fracture of the left humerus and a fracture of the right femur. Counsel for the defendant submitted that the award for both injuries should RM20,000 based on the authorities he cited but Counsel for the plaintiffs referred to two fairly recent cases, that is *Cheng Choo Ping v. Omar bin Hassan* (Dass Vol. 3 173 and *Victor Alphonse Sebastian & Ors. v. Lee Ah Leek* [1987] 1 MLJ xxi where an award of RM30,000 and RM33,000 respectively was made for fracture of the femur, and to *Tan Song Kim v. Neow Ah Jid & Anor*. Dass Vol. 2 311 where RM7,500 was awarded in 1972 for fracture of the humerus. However, all three cases had more serious residual disabilities than the 3rd plaintiff here and I felt that an award of RM22,000 was fair and adequate for the fracture of the femur and gave a similar award of RM7,500 for the fracture of humerus having taken into account the time lapse of 16 years since the award in *Tan Song Kim's* case. With overlapping, I made an award of RM26,000 for both injuries for the 3rd plaintiff.

The 4th plaintiff also sustained a fracture of the right femur where I made a similar award of RM22,000 as for the 3rd plaintiff. For the 1" long laceration on the left side of the forehead, I felt that an award of RM1,000 was reasonable. Similarly, based on recent awards for similar injuries in Dass, I held that an award of RM12,000 was fair for a haemotoma of the right eye. Guided by the award of RM4,000 for fracture of the occipital bone in *Teo Ah Ley v. Tan Kim Hock* [1988] 1 MLJ xxxiv, I awarded the 4th plaintiff RM10,000 for the fractures to the right temporal and occipital bones. In the event, the total award for pain and suffering and loss of amenities for the 4th plaintiff came to RM38,700 having deducted 15% for overlapping.

The awards given are to my mind fair and reasonable considering previous awards for similar injuries, the time lapse since the date of those awards where applicable and the currency inflation in those circumstances. I had also compared the extent of the injuries sustained in the other decisions, although for the same injuries basically, to come to my findings. If I had erred, it would certainly be more towards the inadequacy of these awards.

I also awarded interest at 4% per annum for special damages from the date of accident to the date of judgment and 8% per annum for general damages (except for future losses) from the date of service of writ to the date of judgment and ordered that costs be taxed accordingly.

Also found at [1989] 1 CLJ 967